IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 4136 OF 2006

Jammu & Kashmir Bank Ltd. ..Applicant

Vs.

State of Maharashtra and ors. ..Respondents

Mr. S.N. Satpute i/by Mr. P.K. Hushing & Satpute & Co. for applicant.
Mr. D.P. Adsule, APP for State.
Mrs. Usha Andewar for respondent no.4.

CORAM: B.H. MARLAPALLE, J.

Date : October 24, 2007.

P.C.:

1. Heard the learned counsel for the applicant-bank as well as the learned counsel for the respondent no.4-bank. Both the banks claimed to have finance for the purchase of the suit flat i.e. Flat No.105, 10th floor, Movie Tower Co-Op. Hsg. Society Ltd., Oshiwara, Andheri (West), Mumbai 400 053. The said flat was purchased by the accused Rahul Beri from its earlier owner Mrs. Sujata Pant and he had obtained finance from both the banks i.e. applicant-bank as well as respondent no.4-bank. The

flat came to be attached and, therefore, the applicant-bank had filed an application for return of the said flat. The application has been rejected on 27/6/2006 by the learned Additional Chief Metropolitan Magistrate, 19th Court, Esplanade, Mumbai.

2. It has been now brought to my notice by the learned counsel for the respondent no.4 that Recovery Proceedings No.487 of 2006 have been finally concluded as per the order dated 22/6/2007 passed by the Debts Recovery Tribunal No.3 at Mumbai and Shri R.V. Sanal Kumar, Recovery Inspector has been directed to take possession of the said flat on 28/6/2007.

3. The learned counsel for the applicant-bank states that Recovery Proceedings No.487 of 2006 were instituted by the respondent no.4-bank without impleading the applicant-bank as the necessary party and, therefore, the applicant-bank has made an application for intervention in the said proceedings. The learned counsel for the applicant-bank also submitted that it would be better that the subject flat is sold and the sale proceeds are allowed to be

deposited with the applicant-bank with an undertaking that as and when required the money will be either deposited in the court of the learned Metropolitan Magistrate or with the Debts Recovery Tribunal. All these pleas to be considered by the DRT on the application filed by the applicant-bank in Recovery Proceedings No. 487 of 2006 or in its application filed under the Securitization Act. Therefore, it would be left to the decision of the DRT and both the issues, namely, the disposal of the flat as well as deposit and/or sharing of the sale proceeds between the two banks will be considered by the DRT.

4. No order is required to be passed in this application and undoubtedly the DRT would consider both the above stated issues having regards to the pending complaint - C.C.No. 46/N/2004 filed by the applicant-bank.

5. Application is rejected and without prejudice to the rights and contentions of the respective banks before the DRT.

(B.H. Marlapalle,J.)